

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #6	CCRB Case #: 202003245	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 04/16/2020 3:30 PM, Thursday, 04/16/2020 5:30 PM	Location of Incident: East 157th Street and River Avenue; § 87(2)(b)	Precinct: 44	18 Mo. SOL 10/16/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 05/06/2020 9:54 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/13/2020 11:29 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Maximo Gomez	06426	958643	044 PCT
2. POM Richard Delahanty	13491	961732	044 PCT
3. POM Kenny Victoria	21225	960051	044 PCT
4. POM Daniel Maria	22210	954096	044 PCT
5. An officer			
6. SGT Tony Chacko	01880	946848	BX SVS
7. POM Emmanuel Fernandez	16823	950402	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Meneses	11225	964654	044 PCT
2. LT Steven Degree	00000	943141	NARCBX
3. PO Nicole Spinelli	12688	961320	INT FIO PRG

Officer(s)	Allegation	Investigator Recommendation
A.POM Emmanuel Fernandez	Abuse: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Emmanuel Fernandez drew his gun.	§ 87(2)(b)
B.POM Maximo Gomez	Abuse: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Maximo Gomez drew his gun.	§ 87(2)(b)
C.SGT Tony Chacko	Discourtesy: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.SGT Tony Chacko	Abuse: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
E.POM Kenny Victoria	Force: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Kenny Victoria used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Richard Delahanty	Force: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Richard Delahanty used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
G.POM Daniel Maria	Force: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Daniel Maria used physical force against § 87(2)(b)	
H. An officer	Force: At the intersection of East 157th Street and River Avenue in the Bronx, an officer used physical force against § 87(2)(b)	
I.SGT Tony Chacko	Abuse: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko threatened § 87(2)(b) with the use of force.	
J.SGT Tony Chacko	Abuse: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko threatened an individual with the use of force.	
K.POM Richard Delahanty	Force: At § 87(2)(b) Police Officer Richard Delahanty used physical force against § 87(2)(b)	

Case Summary

On May 6, 2020, § 87(2)(b) filed this complaint with IAB on behalf of her husband, § 87(2)(b). On May 13, 2020, the case was received at the CCRB under IAB Log § 87(2)(b).

On April 16, 2020, at approximately 3:30 p.m., § 87(2)(b) was driving his vehicle in the vicinity of East 157th Street and River Avenue in the Bronx when PO Emmanuel Fernandez and PO Maximo Gomez of the 44th Precinct pulled him over. PO Fernandez and PO Gomez allegedly drew their firearms while approaching § 87(2)(b) vehicle (**Allegations A and B – Abuse of Authority:** § 87(2)(g) § 87(2)(b) refused to provide his documentation and requested a supervisor. Sgt. Tony Chacko, PO Richard Delahanty, PO Daniel Maria, Lt. Steven Degree, and additional officers from the 44th Precinct responded. § 87(2)(b) told Sgt. Chacko that he wanted a supervisor and Sgt. Chacko responded, “I am a supervisor, what the fuck do you think I am?” and, “That’s not how this shit fucking works” (**Allegation C – Discourtesy:** § 87(2)(g) § 87(2)(b) placed his ID against the interior side of the window and Sgt. Chacko reached inside of the vehicle to grab it (**Allegation D – Abuse of Authority:** § 87(2)(g) § 87(2)(b) PO Victoria punched § 87(2)(b) in the face and PO Victoria and PO Delahanty took § 87(2)(b) to the ground (**Allegations E and F – Force:** § 87(2)(g) § 87(2)(b) PO Maria allegedly punched § 87(2)(b) in the back of the head (**Allegation G – Force:** § 87(2)(g) § 87(2)(b) While on the ground, an officer allegedly punched § 87(2)(b) in the back of the head (**Allegation H – Force:** § 87(2)(g) § 87(2)(b) Sgt. Chacko threatened to tase § 87(2)(b) in the face and placed his taser against § 87(2)(b) face (**Allegation I – Abuse of Authority:** § 87(2)(g) § 87(2)(b) Sgt. Chacko pointed his taser at an unidentified bystander (**Allegation J – Abuse of Authority:** § 87(2)(g) § 87(2)(b) PO Delahanty and PO Victoria took § 87(2)(b) to § 87(2)(b) where PO Delahanty allegedly punched § 87(2)(b) in the face and in the testicles (**Allegation K – Force:** § 87(2)(g) § 87(2)(b).

§ 87(2)(b) was arrested and charged with failure to obey a traffic device, aggravated unlicensed operator, reckless driving, obstruction of governmental administration, resisting arrest, making terroristic threats, and menacing. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

20 BWC videos from this incident were obtained and can be found in IAs 65-84. Summaries of the footage can be found in IA #94 (**Board Review 02**).

Findings and Recommendations

Allegation A – Abuse of Authority: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Emmanuel Fernandez drew his gun.

Allegation B – Abuse of Authority: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Kenny Victoria drew his gun.

On April 16, 2020, at approximately 3:30 p.m., § 87(2)(b) was driving alone in his 2003 Dodge Caravan behind a black unmarked Ford Taurus on Walton Avenue in the Bronx. Walton Avenue is a one-way, one-lane street with parking on either side. § 87(2)(b) could not estimate how far behind the Ford Taurus he was driving in feet, but stated that he could see the rear tires of the Ford Taurus, which was the minimum following distance that he was taught in driver’s education. He estimated the distance to be less than a car length, but he was not tailgating the Ford Taurus. The Ford Taurus made a right turn onto East 158th Street. § 87(2)(b) drove around the Ford Taurus as it turned and he continued driving on Walton Avenue. § 87(2)(b) drove one additional block and made a right turn onto East 157th Street, then stopped at a red light at the intersection of East 157th Street and River Avenue. At that time, he noticed that the Ford Taurus was behind him with its emergency lights and siren on. § 87(2)(b) did not hear the siren prior to this moment as he had his music on loud. The officers pulled up next to § 87(2)(b) car and ordered him to pull

over. § 87(2)(b) yelled out of his windows to the officers asking them, “Yo, what are you pulling me over for?” He did not move his vehicle after being ordered to pull over. PO Fernandez and PO Gomez pulled the Ford Taurus in front of § 87(2)(b) car and exited it with their guns drawn and pointed at the ground. PO Fernandez’s gun was a silver handgun. § 87(2)(b) did not recall what PO Gomez’s gun looked like. § 87(2)(b) kept his hands on his steering wheel as PO Fernandez walked to the driver’s side and PO Fernandez walked to the passenger side of § 87(2)(b) vehicle. Once the officers got on either side of § 87(2)(b) vehicle, they re-holstered their firearms **(Board Review 03)**.

Due to the arrest noting the VTL charges, no vehicle stop allegation was pleaded.

PO Fernandez’s BWC footage, starting at the 00:50 mark of the timestamp visible at the bottom of the screen, shows that PO Fernandez pulled the police car in front of § 87(2)(b) vehicle. PO Fernandez then exits the vehicle and approaches the driver’s side of § 87(2)(b) vehicle. At no point in the video is PO Fernandez’s firearm seen, though PO Fernandez’s hands are not in view of the camera. PO Gomez is not seen in this portion of the video. **(Board Review 04)**.

PO Gomez’s BWC footage, starting at the 00:30 mark of the timestamp visible at the bottom of the screen, shows that PO Fernandez pulled the police car in front of § 87(2)(b) vehicle. PO Fernandez then exits the vehicle and approaches the driver’s side of § 87(2)(b) vehicle. At no point in the video is PO Gomez’s firearm seen, though PO Gomez’s hands are not in view of the camera. PO Fernandez is not seen in this portion of the video. **(Board Review 05)**.

PO Gomez testified that he and PO Fernandez observed § 87(2)(b) cross the double yellow line into oncoming traffic, causing an oncoming vehicle to stop short. They attempted to pull § 87(2)(b) over, but he kept driving for several blocks before the officers pulled their vehicle in front of § 87(2)(b) vehicle. Neither PO Gomez nor PO Fernandez drew their firearms as they approached the car **(Board Review 06)**.

PO Fernandez’s statement was consistent with PO Gomez’s statement. PO Fernandez testified that he did not draw his firearm and does not recall seeing any other officers draw their firearm at any point **(Board Review 07)**.

§ 87(2)(b) testified that upon being pulled over, PO Gomez and PO Fernandez drew their firearms upon approaching his vehicle. Both PO Gomez and PO Fernandez denied drawing their firearms. Additionally, although the BWC video does not show the officers drawing their firearms, it does not show the officer’s hands in view of the camera. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation C – Discourtesy: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko spoke discourteously to § 87(2)(b)

Although not alleged by § 87(2)(b) the following was captured on Sgt. Chacko’s BWC footage – At the 01:00 mark of the timestamp visible at the bottom of the screen, Sgt. Chacko approaches § 87(2)(b) car and asks him why he is refusing to provide his documentation. § 87(2)(b) responds that he did not think that he did anything wrong and asks for a supervisor. At 01:25, Sgt. Chacko tells § 87(2)(b) that he is the supervisor and asks, “What the fuck do you think I am?” § 87(2)(b) tells Sgt. Chacko that he wants a “white shirt” supervisor and Sgt. Chacko responds that § 87(2)(b) can either provide his documents or get out of the car. § 87(2)(b) places his ID against the window and says that Sgt. Chacko can look at it through the window. At 01:55, Sgt. Chacko replies, “That’s not how this fucking shit works” **(Board Review 08)**.

Sgt. Chacko testified that he repeatedly ordered § 87(2)(b) to provide his documentation and that § 87(2)(b) refused. He did not initially recall using profanity while speaking with § 87(2)(b) however, after reviewing the BWC footage he acknowledged that he did. Sgt. Chacko did not know why he used profanity and acknowledged that it served no law enforcement purpose (**Board Review 09**).

Police officers must be courteous and respectful when dealing with civilians NYPD Patrol Guide, Procedure 203-09 (Board Review 10). While officers are allowed to use discourteous language during stressful situations, officers are only permitted to do so when scenes are so chaotic that the duty of courteousness and professional behavior should be overridden by the immediate need to maintain order Disciplinary Case No. 2017 17005 (**Board Review 11**).

The BWC footage shows that Sgt. Chacko spoke discourteously to § 87(2)(b). Sgt. Chacko admitted to using profanity, stated that he did not know why he did so and stated that it served no law enforcement purpose. Although the BWC shows that § 87(2)(b) refused Sgt. Chacko's orders to provide his documentation, the incident was not chaotic and Sgt. Chacko still had a duty of courteousness and professional behavior. § 87(2)(g)

Allegation D – Abuse of Authority: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko searched the vehicle in which § 87(2)(b) was an occupant.

Sgt. Chacko's BWC footage, starting at the 01:55 mark of the timestamp visible at the bottom of the screen, shows that after § 87(2)(b) places his ID against the window and Sgt. Chacko tells him, "That's not how this fucking shit works," that § 87(2)(b) tells Sgt. Chacko, "I will smack the shit out of you." Sgt. Chacko then reaches into § 87(2)(b) open window to grab his ID. After Sgt. Chacko reaches into the open window, Lt. Degree reaches into the open window and unlocks the door (**Board Review 08**).

§ 87(2)(b) testimony was consistent with the BWC footage (**Board Review 03**).

Sgt. Chacko testified that § 87(2)(b) repeatedly refused the officers' commands to provide his documentation, even after they explained the reason for the stop. Because § 87(2)(b) refused to provide his documentation, Sgt. Chacko decided to remove § 87(2)(b) from his vehicle (**Board Review 09**).

Upon making a lawful stop of a motor vehicle for a traffic violation, the police may order the driver and all passengers out of the vehicle until the stop is concluded. People v. Robinson, 74 N.Y.2d 773 (1989) (**Board Review 12**).

Given that the BWC shows that Sgt. Chacko was the first officer to reach into § 87(2)(b) vehicle, and since he testified that he made the decision to remove § 87(2)(b) from his vehicle, the allegation has been pled to Sgt. Chacko.

§ 87(2)(b) testified that Sgt. Chacko reached into his vehicle during the car stop. The BWC shows that Sgt. Chacko repeatedly ordered § 87(2)(b) to provide his documentation and that § 87(2)(b) was uncooperative. Sgt. Chacko then told § 87(2)(b) that he could provide his documentation or exit the vehicle, at which point § 87(2)(b) told Sgt. Chacko, "I'll smack the shit out of you." § 87(2)(g)

Allegation E – Force: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Kenny Victoria used physical force against § 87(2)(b)

Allegation F – Force: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Richard Delahanty used physical force against § 87(2)(b)

Allegation G – Force: At the intersection of East 157th Street and River Avenue in the Bronx, Police Officer Daniel Maria used physical force against § 87(2)(b)

§ 87(2)(b) testified that after the officers opened his door, PO Victoria punched § 87(2)(b) in the mouth causing § 87(2)(b) lip to bleed. The officers did not order § 87(2)(b) to step out of the vehicle nor did they provide § 87(2)(b) with an opportunity to step out of the car voluntarily. PO Victoria reached in the car, unbuckled § 87(2)(b) seatbelt, and punched him in the right side of his face. PO Maria entered § 87(2)(b) car from the passenger side and punched § 87(2)(b) in the back of the head while officers grabbed § 87(2)(b) by the collar of his hoodie and pulled him out of the car through the driver's door, causing § 87(2)(b) hoodie to rip. PO Victoria and PO Delahanty slammed § 87(2)(b) onto the ground next to the car (Board Review 03).

PO Victoria's BWC footage, starting at the 03:45 mark of the timestamp visible at the bottom of the screen, shows that after the officers opened § 87(2)(b) car door, PO Victoria repeatedly orders § 87(2)(b) to get out of the car while he grabs § 87(2)(b) § 87(2)(b) pushes back against PO Victoria with his hands and remains in the vehicle. PO Maria is seen in the passenger seat pushing § 87(2)(b) out through the driver's door. PO Delahanty, seen wearing a blue baseball hat, grabs § 87(2)(b) from the driver's side doorway and pulls on § 87(2)(b). At 03:54, PO Victoria's closed fist strikes § 87(2)(b) in his right shoulder at the base of his neck. At 03:55, PO Victoria strikes § 87(2)(b) with a closed fist in the right side of his forehead. At 03:56, PO Victoria strikes § 87(2)(b) with a closed fist a third time in the lower right side of § 87(2)(b) face. PO Victoria and PO Delahanty then pull § 87(2)(b) to the ground. The video does not show PO Maria striking § 87(2)(b) (Board Review 13).

PO Maria's BWC footage, starting at the 01:10 mark of the timestamp visible at the bottom of the screen, shows that after the officers opened the driver's side door, PO Maria entered the passenger side door, unbuckled § 87(2)(b) seat belt, and assisted the officers in pushing § 87(2)(b) out of the vehicle. At no point is PO Maria seen striking § 87(2)(b) (Board Review 14).

PO Victoria testified that he responded to the location after PO Fernandez and PO Gomez called for additional units. Upon arriving on scene, he saw that the police car was pulled in front of § 87(2)(b) vehicle. The officers told PO Victoria that they attempted to pull over § 87(2)(b) vehicle for a VTL infraction and that § 87(2)(b) refused to pull over and refused to provide his documentation. Given the circumstances, PO Victoria was concerned that § 87(2)(b) would use his car as a weapon. § 87(2)(b) was under arrest for the VTL infraction and for not providing his identification. An officer opened § 87(2)(b) car door and an officer ordered § 87(2)(b) to get out of the car and § 87(2)(b) refused by ignoring the command and tensing his body. PO Victoria, PO Delahanty, and other officers pulled § 87(2)(b) out of the car. PO Victoria did not recall punching § 87(2)(b). After § 87(2)(b) was removed from the car, the officers controlled his arms and pulled him to the ground in a controlled manner to place him in handcuffs. The officers did not slam § 87(2)(b) onto the ground. After reviewing his BWC footage, PO Victoria acknowledged that it showed him striking § 87(2)(b) but PO Victoria did not have an independent recollection of doing so. PO Victoria testified that based on the video, it appeared that he did so to overcome § 87(2)(b) resistance. It was not PO Victoria's intention to strike § 87(2)(b) in the head, but due to his movement it was difficult to aim his strike elsewhere. PO

Victoria did not recall how many times he struck § 87(2)(b) (Board Review 15).

PO Delahanty testified that after he arrived on scene he saw multiple officers rushing toward § 87(2)(b) driver's door. An officer, who PO Delahanty did not remember, reached in to take § 87(2)(b) keys out of the ignition to prevent him from driving away. PO Delahanty did not remember what the officers did to remove § 87(2)(b) from the car, but recalled that he held onto § 87(2)(b) left arm. § 87(2)(b) resisted the officers' attempts to remove him from the vehicle by applying opposite pressure to their attempts at pulling him out. PO Delahanty did not recall any officers striking § 87(2)(b) (Board Review 16).

NYPD Patrol Guide, Procedure 221-01 states that when appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of service should consider the following: (Board Review 17),

- A. The nature and severity of the crime or circumstances
- B. Actions taken by the subject
- C. The duration of the action
- D. The immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders
- E. Whether the subject is actively resisting custody
- F. Whether the subject is attempting to evade arrest by flight
- G. Number of subjects in comparison to the number of MOS
- H. Size, age, and condition of the subject in comparison to the MOS
- I. Subject's violent history, if known
- J. Presence of a hostile crowd or agitators
- K. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

As noted in Allegations A and B, § 87(2)(b) testified that he did not know that officers were pulling him over, and admitted to driving several blocks before PO Fernandez and PO Gomez forced him to pull over by pulling their vehicle in front of him. Furthermore, it is undisputed that § 87(2)(b) refused to provide his documents to the officers, even after he requested a supervisor and the officers called one to the scene. Lastly, the BWC shows that § 87(2)(b) threatened to "smack the shit" out of Sgt. Chacko and refused to exit the vehicle, and pushed back against PO Victoria after PO Victoria attempted to pull him out. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that he was struck three times, twice by PO Victoria and once by PO Maria. The BWC shows that PO Victoria struck § 87(2)(b) three times, and does not show PO Maria or any other officer striking § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

Allegation H – Force: At the intersection of East 157th Street and River Avenue in the Bronx, an officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that once on the ground, an officer ordered him to place his hands behind his back while an officer punched § 87(2)(b) three times in the back of the head. § 87(2)(b) did

not see the officer and could not describe the officer.

§ 87(2)(b) was uncooperative in providing a signed HIPAA form to the investigation, and thus his medical records could not be obtained (**Board Review 03**).

PO Nicole Spinelli's BWC footage, starting at the 02:16 mark of the timestamp visible at the bottom of the screen, shows several officers kneeling and standing around § 87(2)(b) who is lying on the ground. At no point is any officer seen striking § 87(2)(b) though the view is obscured by the crowd of officers (**Board Review 18**). None of the BWC footage in this case captures officers striking § 87(2)(b) while he is on the ground (**Board Review 02**).

PO Victoria, PO Gomez, PO Fernandez, PO Delahanty, and Sgt. Chacko testified that they did not and did not observe any officers use any force on § 87(2)(b) while he was on the ground besides pulling his arms behind his back (**Board Review 15, 06, 07, 16, 09**).

§ 87(2)(b) alleged that an officer struck him three times in the back of the head while he was on the ground, but could not describe the officer. None of the BWC footage captures an officer striking § 87(2)(b) and none of the officers in this case admitted to nor witnessed an officer striking § 87(2)(b) in the back of his head. However, the BWC is obscured and does not provide a clear view of what occurred. § 87(2)(g)

Allegation I – Abuse of Authority: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko threatened § 87(2)(b) with the use of force.

Allegation J – Abuse of Authority: At the intersection of East 157th Street and River Avenue in the Bronx, Sergeant Tony Chacko threatened an individual with the use of force.

Sgt. Chacko's BWC footage, starting at the 02:05 mark of the timestamp visible at the bottom of the screen, shows that as officers were pulling § 87(2)(b) out of his car, Sgt. Chacko removed his taser, pointed it at § 87(2)(b) and stated repeatedly, "I gonna tase you in your face." At 02:22, Sgt. Chacko, who is standing in the middle of the street, turns around and faces an unidentified bystander who stands on the sidewalk, two sidewalk squares away from the street. Sgt. Chacko points his taser at the individual and states, "Back up please. Don't come forward." The individual takes a step back and Sgt. Chacko lowers his taser. On the ground, § 87(2)(b) tells the officers that his hand is behind his back. Sgt. Chacko tells § 87(2)(b) that his hand is not behind his back. At 02:34, Sgt. Chacko leans down, places his taser against the right side of § 87(2)(b) head, and says again repeatedly, "I will tase you in your face." The light from Sgt. Chacko's taser is seen illuminated against the side of § 87(2)(b) face. Once § 87(2)(b) is handcuffed Sgt. Chacko stands up and removes the taser from § 87(2)(b) face (**Board Review 08**).

PO Victoria's BWC, starting at the 04:20 mark of the timestamp visible at the bottom of the screen, shows the same moment from a different angle. § 87(2)(b) left arm is seen underneath him while § 87(2)(b) tells the officers that his hands are behind his back (**Board Review 13**).

§ 87(2)(b) statement was consistent with the BWC footage. He alleged that while on the ground, Sgt. Chacko placed his taser against § 87(2)(b) forehead and told him to stop resisting or he would taser him. § 87(2)(b) told the officers that he could not move his left arm because they were on top of him preventing him from moving. The officers got up off § 87(2)(b) grabbed his left arm, and handcuffed his left wrist. § 87(2)(b) remained still the entire time the officers used force on him and did not attempt to defend himself nor did he resist the officers in anyway (**Board Review 03**).

Sgt. Chacko did not initially recall this incident. After reviewing his BWC footage, he acknowledged threatening to taser § 87(2)(b) in his face and placing his taser against § 87(2)(b) face. He testified that he did so to scare § 87(2)(b) into compliance with being removed from the vehicle and with placing him in handcuffs. Sgt. Chacko acknowledged that deploying his taser directly at § 87(2)(b) face is prohibited by the patrol guide. Sgt. Chacko was trained to deploy his taser center mass, and to avoid certain areas such as the head. Sgt. Chacko testified that he did not see the bystander prior to the moment that they were seen on the BWC footage, and that there was no prior issue with the unidentified individual getting close. The distance that the bystander was at was okay, and Sgt. Chacko was attempting to warn the individual not to get any closer to ensure safety. Sgt. Chacko's Taser happened to be in his hand when he pointed at the person. He did not intend to deploy the Taser. It was not turned on. He could tell because when it was on, there was a red light that shot out from the Taser. If he was going to use it, that light would have been depicted on video. Sgt. Chacko acknowledged seeing the white light against § 87(2)(b) face when he placed his taser against § 87(2)(b) face, but Sgt. Chacko maintained that the taser was off and stated that he did not know where the light came from (**Board Review 08**).

NYPD Patrol Guide, Procedure 221-08 states that a Conducted Electrical Weapon (CEW) should only be used against persons who are actively resisting or exhibiting active aggression. When feasible, a verbal warning, consistent with personal safety, should be given to the intended subject. Officers are to aim for center mass, defined as below the neck. Officers are to avoid discharging a taser at an individual's head and neck if possible (**Board Review 221-08**).

§ 87(2)(b) alleged that Sgt. Chacko placed his taser against his head and threatened to tase him as the officers wanted him to provide his left arm behind his back. Sgt. Chacko's BWC footage shows that Sgt. Chacko began threatening to tase § 87(2)(b) in his face from the moment that officers pulled § 87(2)(b) from his car, before placing his taser against § 87(2)(b) face and again threatening to tase him in the face. Sgt. Chacko testified that he knew that he was not permitted to deploy his taser at § 87(2)(b) face, and that he took the actions to scare § 87(2)(b) into compliance. The BWC shows that § 87(2)(b) was resisting the officer's attempts to handcuff him, § 87(2)(g). However, the Patrol Guide notes that officers are to avoid deploying a taser at subject's heads, if possible. § 87(2)(g)

In addition, Sgt. Chacko's BWC footage shows that in the middle of the struggle with § 87(2)(b) that Sgt. Chacko turned and pointed his taser at an unidentified individual who was observing from the sidewalk while ordering the unidentified individual to step back. Sgt. Chacko testified that this was the first moment that he noticed the unidentified individual, and that there was no prior issue with the bystander getting closer. According to Sgt. Chacko, the distance that the unidentified individual was standing was appropriate and he intended to warn them not to come closer. Sgt. Chacko did not intend to threaten the unidentified individual with his taser and stated that the taser just happened to be in his hand while he was pointing. Given that Sgt. Chacko pointed his taser at the individual, § 87(2)(g)

§ 87(2)(b) testified that the individual was simply observing the incident from a reasonable distance, and was not otherwise attempting to get involved in the incident. § 87(2)(g)

Allegation K – Force: At § 87(2)(b) Police Officer Richard Delahanty used physical force against § 87(2)(b)

There is no BWC footage of this portion of the incident as officers are prohibited from recording inside of hospitals.

§ 87(2)(b) alleged that after he was handcuffed the officers took him to the stationhouse. While in the cells, § 87(2)(b) asked to go to the hospital. Officers called EMS who took § 87(2)(b) to § 87(2)(b). PO Delahanty and PO Victoria escorted § 87(2)(b) to the hospital. At the hospital, § 87(2)(b) was taken to an exam room. § 87(2)(b) was standing up and his shoulder was hurting, so he moved his shoulder in an attempt to relieve his pain. PO Delahanty punched § 87(2)(b) in the face, causing his mouth to bleed. The officers sat § 87(2)(b) in a chair and PO Delahanty punched § 87(2)(b) in the testicles. § 87(2)(b) then became “disrespectful” and told the officers to “suck his dick.” § 87(2)(b) threatened the officers and told them that when he got out, he would shoot them and shoot up the precinct. § 87(2)(b) made these statements because he was upset that the officers kept punching him.

§ 87(2)(b) was uncooperative in providing a signed HIPAA form to the investigation, and thus his medical records could not be obtained (**Board Review 03**).

§ 87(2)(b) provided a photo taken by § 87(2)(b) when § 87(2)(b) returned to the stationhouse after going to the hospital. The photo shows § 87(2)(b) being escorted by officers, including PO Delahanty and PO Victoria. § 87(2)(b) is seen wearing a mask that has a red mark on it (**Board Review 20**).

Although attempts were made to secure surveillance footage as soon as possible, the Director of Security of § 87(2)(b) confirmed that the footage expired (**Board Review 21**).

PO Delahanty denied striking § 87(2)(b). He testified that at the hospital, § 87(2)(b) began yelling and flailing his body because he had not been seen by a doctor yet. PO Delahanty and other officers told § 87(2)(b) to calm down. § 87(2)(b) kept trying to pull down his mask. PO Delahanty pulled the mask up one time but stopped once he realized § 87(2)(b) kept pulling it back down with his mouth. PO Delahanty did not remember seeing any blood on § 87(2)(b) mask. § 87(2)(b) threatened to shoot up the precinct. He threatened to have his girlfriend take a picture of PO Delahanty and shoot him in the back of the head. PO Delahanty was disturbed by the specific nature of § 87(2)(b) threats, but did not respond to any of them other than telling him to calm down. PO Delahanty did not know why § 87(2)(b) fixated his threats specifically on him, but noticed § 87(2)(b) made multiple references to him being white. PO Delahanty did not remember § 87(2)(b) being forced to sit down or be moved to the corner of the waiting room. The hospital staff noticed § 87(2)(b) behavior and rushed to check his injuries. After he was cleared by the hospital staff, PO Delahanty drove § 87(2)(b) back to the precinct (**Board Review 16**).

PO Victoria testified that PO Delahanty did not strike § 87(2)(b). He testified that at the hospital, they waited with § 87(2)(b) in a waiting room for a doctor. § 87(2)(b) was wearing a facemask. § 87(2)(b) kept trying to rub his face against his shoulders to remove the facemask to spit and PO Victoria had to put § 87(2)(b) mask back into place over his nose and mouth. § 87(2)(b) continued to curse and was trying to spit and to kick. He was also yelling at PO Delahanty, saying to him “Imma kill you, white boy”, “Cracker”, “Faggot”, “Suck my dick”. PO Victoria did not know why § 87(2)(b) was upset with PO Delahanty specifically. Officers told § 87(2)(b) to calm down and to stop resisting. § 87(2)(b) was seated in a chair, which

officers slid into a corner as § 87(2)(b) was still seated. § 87(2)(b) tried to get up from the chair, officers held his shoulders in place, pushing him down into the chair (**Board Review 15**). § 87(2)(b) testified that at § 87(2)(b) PO Delahanty punched him in the face and in the testicles, and that his mouth bled as a result. The photo provided by § 87(2)(b) shows a red mark on his mask, but given that he was uncooperative with providing medical records, the investigation could not verify the injury. Both officers denied that PO Delahanty punched § 87(2)(b).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (**Board Review 22**).
- PO Fernandez has been a member-of-service for 10 years and has been a subject in one additional CCRB complaint and two additional allegations, none of which were substantiated. § 87(2)(g)
- PO Gomez has been a member-of-service for 6 years and has been a subject in six additional CCRB complaints and nine additional allegations, one of which was substantiated § 87(2)(g)
 - Case 201901152 involved a substantiated allegation of Discourtesy – Word. The board recommended instructions and the NYPD imposed instructions.
- Sgt. Chacko has been a member-of-service for 13 years and has been a subject in four additional CCRB complaints and 12 additional allegations, two of which were substantiated. § 87(2)(g)
 - Case 200909310 involved a substantiated allegation of Abuse - Stop. The board assigned charges and the NYPD imposed instructions.
 - Case 201809767 involved a substantiated allegation of Discourtesy – Word. In the case, the victim violated an order of protection. Sgt. Chacko told the victim, “You fucked up bro. Eat it,” and, “You fucked up. It is what it is.” The victim was upset that they were being arrested because they had a job interview. Sgt. Chacko responded, “Well guess what? Now you don’t have a fucking job interview cause now I’m gonna add more shit to it so calm the fuck down.” The board recommended formalized training and the NYPD imposed instructions.
- PO Delahanty has been a member-of-service for five years and has been a subject in three additional CCRB complaints and six additional allegations, one of which was substantiated. § 87(2)(g)
 - Case 201807688 involved a substantiated allegation of Discourtesy word. The board recommended command level instructions and the NYPD imposed command level instructions.
 - Case 201807688 also contained an unsubstantiated allegation of Force – Physical Force. In the case, the civilian alleged that while in transport to central booking, the victim requested their medication repeatedly. PO Delahanty turned around in the vehicle and punched the victim in the face four or five times.
 - Case 201801598, which was closed pending litigation, involved an allegation that PO Delahanty punched the victim in the face two times and in his eye once.
 - Case 201808809, which was closed as complainant uncooperative, involved an allegation that during arrest processing, in front of the main desk of the stationhouse, PO Delahanty punched the victim in the face.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of July 23, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 23**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 06

Investigator: Inv. Thomas Juliano Inv. Thomas Juliano 12/7/2021
Signature Print Title & Name Date

Squad Leader: Jessica Peña IM Jessica Pena 12/9/2021
Signature Print Title & Name Date